

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17705 of Leon and Heather Kafele, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to allow a third-story addition and roof deck to an existing one-family row dwelling, not meeting lot occupancy requirements (§ 403) or nonconforming structure requirements (§ 2001.3), in the R-4 district at the premises 906 G Street, S.E. (Square 949, Lot 805).

HEARING DATE: January 22, 2008
DECISION DATE: February 12, 2008

DECISION AND ORDER

This self-certified application was submitted July 26, 2007 by Heather Kafele and Leon Kafele (together, the “Applicant”), the owners of the property that is the subject of the application. The application requested a special exception under § 223 to construct a third-story addition on a two-story row dwelling that did not meet zoning requirements for lot occupancy or the enlargement of nonconforming structures in the R-4 zone district at 906 G Street, S.E. (Square 949, Lot 805). Following a public hearing and public meeting, the Board voted on February 12, 2008 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 31, 2007, the Office of Zoning provided notice of the application to the Office of Planning; the Department of Transportation; the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC within which the subject property is located; and Single Member District/ANC 6B04. Pursuant to 11 DCMR § 3113.13, on October 24, 2007 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 6B, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on November 2, 2007 (54 DCR 10616).

Party Status. In addition to the Applicant, ANC 6B was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to Lisa Mages and Susann Sherman, who live in the 500 block of 9th Street, S.E. in residences abutting the subject property. A third request for party status in opposition to the application, from Sarah Grayton, a resident of the 500 block of 9th Street, S.E. near the subject property, was denied because Ms. Grayton did not appear at the hearing.

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BZA APPLICATION NO. 17705
PAGE NO. 2

Applicant's Case. The Applicant described plans to construct a third-floor addition on the existing two-story row dwelling, with a new roof deck adjoining the addition. The Applicant also plans to remove an enclosed porch at the rear of the dwelling. The Applicant presented testimony and graphical representations, including photographs, drawings, and a sun study, in asserting that the planned addition would not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property.

Government Reports. By memorandum dated January 15, 2008, the Office of Planning ("OP") recommended approval of the application based on its conclusion that the requested special exception was consistent with the requirements of § 223. By supplemental report dated February 8, 2008, OP reiterated its opinion that the proposed addition would not unduly affect the light available to neighboring properties, given the relatively small increase in building height, "the amount of sunlight already blocked due to the close configuration of homes, and the muted anticipated additional sunlight being obstructed."

ANC Report. At a regularly scheduled and properly noticed meeting on December 11, 2007, with a quorum present, ANC 6B voted 7-0-1 to support the Applicant's request for "a special exception to allow [a] 3rd floor rear addition and roof deck on [an] existing one-family row dwelling not meeting lot occupancy and nonconforming structure requirements...". According to ANC 6B, its recommendation was based on its review of "multiple views of the property with rationale and justifications for the special exception based upon the applicable DC Codes and the support of the adjacent neighbors."

Parties in Opposition to the Application. The parties in opposition to the application argued that the proposed third-story addition would significantly and adversely affect the light available at the rear of their houses, and that the increase in height of the Applicant's row dwelling due to the addition would create a "canyon effect" for the properties abutting to the west.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 906 G Street, S.E., on the north side of the street near its intersection with 9th Street, S.E. (Square 949, Lot 805).
2. The lot is rectangular, 18 feet wide and 70 feet long. The property is improved with a two-story, one-family row dwelling that is 18 feet wide and approximately 48 feet deep. The rear portion of the dwelling is approximately four feet, four inches narrower than the main portion of the house, forming an open court.
3. The property abutting the subject property on the east is improved with a detached dwelling. The two dwellings are approximately five feet apart.

4. On the west, the subject property abuts four lots, each improved with a row dwelling facing 9th Street. The rear walls of three of the residences are located approximately six feet from the west side of the Applicant's dwelling; the rear wall of the fourth dwelling abuts the rear yard of the subject property.
5. The subject property is located in the Capitol Hill Historic District.

Applicant's Proposal

6. The Applicant proposes to construct a third-story addition with an area of approximately 438 square feet that will be used as a master bedroom and bathroom. The addition will be set back from the front of the house by approximately 13 feet. Its rear (north) and west sides will coincide with the existing rear and west sides of the house, while a portion of the east side will be built at an angle so that the addition will be narrower (approximately eight feet, six inches) toward the front of the house.
7. The Applicant also plans to construct a roof deck accessible from the new addition. The deck will be approximately 18 feet long and its width will range from approximately four feet to 10 feet along the east side of the house. The deck will also be set back approximately 13 feet from the front of the house.
8. The addition will be faced with wood siding, translucent panels, and copper fascia, and will have a low-slope rubber roof. The rear wall will have several clerestory windows, but no windows will be installed on the west side of the addition. The east side will not have windows on the rear portion of the addition; the angled portion of the eastern wall will have folding panel doors, set back at least five feet from the existing parapet, to provide access to the roof deck. The windows at the front of the addition will be set back more than 13 feet from the front of the house.
9. Because the addition and roof deck will be constructed behind the parapet presently on the roof of the row dwelling, the deck and the lower portion of the addition will not be visible from neighboring properties.
10. The addition will increase the height of the building above the parapet by approximately five feet, from 29 feet, 10 inches to 34 feet, 9 inches. A maximum building height of 40 feet and three stories is permitted in the R-4 zone. 11 DCMR 400.1.

Harmony with Zone Plan

11. The subject property and surrounding area are zoned R-4. The R4 district is designed to include areas developed primarily with row dwellings, where a substantial number of dwellings have been converted into dwellings for two or more families. 11 DCMR § 330.1. The primary purpose of the R-4 district is the stabilization of remaining one-family dwellings. 11 DCMR § 330.2.

12. The lot occupancy of the subject property is currently 71.8 percent, and will be 68.3 percent after removal of the rear enclosed porch. The R-4 zone generally permits a maximum lot occupancy of 60 percent, which may be increased to 70 percent if approved as a special exception. 11 DCMR §§ 403.2, 223.3.
13. A rear yard of at least 20 feet is required in the R-4 zone. 11 DCMR § 404.1. The rear yard, which is presently nonconforming at 17 feet deep, will increase to approximately 22 feet after removal of the rear enclosed porch.
14. The subject property is nonconforming with respect to lot area. The lot area of the subject property is 1,260 square feet, while the R-4 zone requires a minimum of 1,800 square feet. 11 DCMR § 401.3.
15. The subject property, which has an open court along the east property line at the rear of the row dwelling, is also nonconforming with respect to court width. Where an open court is provided in an R-4 zone, the court must have minimum dimensions of four inches per foot of height, but not less than six feet. 11 DCMR § 406.1. The open court at the subject property is four feet, four inches wide where the minimum required is presently 9.7 feet. The planned third-story addition will increase the height of the building by approximately five feet, increasing the minimum court width requirement to approximately 11.6 feet.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under § 223 to construct a third-story addition to a one-family row dwelling, not meeting requirements relating to lot occupancy, court width, or enlargement of nonconforming structures, in the R-4 district at 906 G Street, S.E. (Square 949, Lot 805). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1.

An addition to a one-family dwelling may be permitted in the R-4 district, even if the addition does not comply with generally applicable area requirements or with restrictions on the enlargement of a nonconforming structure, if approved as a special exception subject to certain provisions. 11 DCMR § 223.1. Principally, the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, considering especially that the light and air available to neighboring properties must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the addition, as viewed from the street or other public way, must not substantially visually

BZA APPLICATION NO. 17705
PAGE NO. 5

intrude upon the character, scale and pattern of houses along the subject street frontage. 11 DCMR § 223.2.

The Board concludes that the proposed third-floor addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically with respect to potential impacts on light, air, privacy, and visual intrusion. The Board credits the testimony of the Office of Planning that the planned third-story addition will not unduly affect the light and air available to neighboring properties given the relatively small five-foot increase in building height, the setbacks from the property to the east, and the tight configuration of abutting properties to the west, such that the addition will not significantly diminish the light and air presently available to those properties. The sun study submitted by the Applicant illustrates that the addition will have no impact on light available to the property abutting the subject property to the east, and minimal impact on the direct light available to properties abutting to the west. The light and air available to neighboring properties to the west are affected by the nonconforming nature of those properties, which have rear yards of, at most, six feet, where the Zoning Regulations require a minimum of 20 feet. While the new addition, which will rise five feet above the current height of the Applicant's row dwelling, will cause some diminution of direct light available to some neighboring properties, it will not unduly affect the light and air now available to neighboring properties.

The Board also concludes that the planned addition will not compromise the privacy of use and enjoyment of neighboring properties, or visually intrude on the character, scale, or pattern of houses along the G Street frontage. The placement of windows in the new addition, as described in Finding of Fact # 8, and the existence of a parapet along the current roof of the Applicant's row dwelling will minimize the Applicant's views from the addition onto neighboring properties. The addition's setback from the front of the dwelling and the parapet will minimize views of the addition from public areas.

By increasing the height of the row dwelling without increasing the width of the existing court, the planned addition will increase the nonconforming aspect of the open court created by the Applicant's row dwelling. Subject to the provisions of § 223, the Board may approve a special exception allowing construction of an addition that does not comply with court requirements or restrictions on the enlargement of nonconforming structures. The Board concludes that approval of the proposed third-floor addition will not have an adverse effect on the use or enjoyment of any abutting or adjacent dwelling related to the enlargement of the existing open court on the subject property. The court is approximately four feet wide, and is located more than nine feet from the house on the abutting property. A slight increase in the height of the building will not substantially affect the light or air available in the existing open court or between the two dwellings.

Approval of the requested special exception is consistent with the requirements of §§ 223.3 and 223.5. The lot occupancy of the subject property, after removal of the rear porch, will not exceed 70 percent. The Applicant will continue to use the subject property as a one-family

dwelling, so that approval of the requested special exception will not permit the expansion of any nonconforming use.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 6B, the Board concludes that the Applicant has satisfied the requirements for a special exception under § 223 to allow construction of a third-floor addition to an existing two-story, one-family row dwelling in the R-4 district at 906 G Street, S.E. (Square 949, Lot 805). Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: 5-0-0 (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Shane L. Dettman and Anthony J. Hood (by absentee vote) to approve)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 18 2008

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT

BZA APPLICATION NO. 17705
PAGE NO. 7

THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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BZA APPLICATION NO. 17705

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 18, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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BZA APPLICATION NO. 17705
PAGE NO. 2

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